In the High Court of Judicature at Madras

Dated: 01.02.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice N. PAUL VASANTHAKUMAR

Writ Petition Nos.12224/1998, 9188 to 9190 of 1999

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W.P.No.12224 of 1998:
M/s. Ankur Paradise Flat Owners
Association, No.20, Millers Road
Kilpauk, Chennai 600 010.

..Petitioner

..vs..

1.N. Sambandam
2.N.S. Vijaya Prasad
3.Prakash N. Bhatavia
4.M.S. Balaji

5.Chennai Metropolitan Development
Authority, Talamuthu Natarajan
Building, Egmore, Chennai 600 008. .. Respondents

W.P.Nos.9188 to 9190 of 1999:
N. Sambandam .. Petitioner in
all the Wps.

vs.

1. Chennai Metropolitan Development
Authority, rep. By its
Member Secretary,
No.8, Gandhi Irwin Road
Egmore, Chennai 600 008.

2.State of Tamil Nadu rep. By its
Secretary, Housing and Urban
Development Department
Fort St. George, Chennai 600 009.

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3. Ankur Paradise Flat Owners
Association rep. By its Secretary
No.20, Millers Road
Kilpauk, Chennai 600 010.

4.Navaratanmal Lunawath
Partner and Power Agent of
Ankur Housing Development Corporation
now having office at 'Ankur Manor'
1st Floor, 182, Poonamallee High Road
Kilpauk, Chennai 600 010.

.. Respondents in all the Wps.

Writ petitions filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus and Certiorarified Mandamus as stated therein.

W.P.No.12224 of 1998:- Writ of Mandamus directing to the 5th respondent to remove the unauthorised construction of walls made by Respondents 1 to 4 in the side set back portion on southern side closure of gate on the front side in the building complex at No.20 millers Road, Kilpauk, Madras- 600 010.

W.P.No.9188 of 1999:- (i) to issue a writ of certiorarified Mandamus calling for the entire records of th Ist Respondent (Chennai Metropolitan Development Authority) from the stage of development Application dated 15.9.92 and planning permission aged 4.11.92 granted in permit No.B/15024/42/A to E/92 of premises situate at No.20. Millers Road, Kilpauk,. chennai-10 upto the issue of the Ist Demolition Notice dated 22.4.98 issued in their Letter No.EN2/25700/97 and the 2nd Demolition Notice dated 31.8.98 issued in their Letter No.EN2/25700/97 and all subsequent proceedings taken thereunder and to quash the said two impugned demolition notices on the ground of want of jurisdiction and as being ultravires Article 14 & 300A of the Constitution of India and as being opposed to principles of natural justice, besides violative of section 56(1) of the Tamilnadu Town & Country planning Act 1971 which confers immunity from demolition in respect of any notice and consequently forbear the Ist respondent from implementing the said two impugned demolition notices and further forbear the 3rd respondent herein from carrying out their threat of demolition of all six cross boundary walls situate in the southern set back of the premises known as "Ankur Pradise" at No.20, Millers Road, Kilpauk, Chennai-600 010 or issue any other appropriate writ or order or direction against all the Respondents, which in the circumstances of the case, this Honourable Court deems fit to pass.

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(ii) award costs to the petitioner against all the Respondents.

W.P.No.9189 of 1999:-

(i) to declare section 2 (40-A) 113-A and 122(2) (CC) of the Tamilnadu Town & Country planning Act (Amendment Act No.58 of 1998) which came into force on 1.3.99 as being ultravires Article 14 & 300 A of the Constitution of India besides being violative of the clause in Section 56(1) of Tamilnadu Town & country planning Act 1971 which confer immunity from demolition in respect of nay building construction of which has been completed three years prior to the issue of demolition notice or issue any other appropriate writ or order or direction against all the Respondents, which in the circumstances of the case, this Honourable Court deems fit to pass and thus render justice.

(ii) award costs to the Petitioner against all the Respondents.

W.P.No.9190 of 1999:- (i) to issue a writ of certiorari calling for the entire records of the 2nd respondent herein in the impugned G.O. Ms.No.76H & UD (UD) Department dated 27.2.99 and the Application, Assessment and collection of Regularisation fee (Chennai Metropolitan area)Rules 1999 issued thereunder as being ultravires Article 14 and 300-A of the of the Constitution of India and quash the same as being violative of the clause in section 56(1) of Tamilnadu Town & Country planning Act 1971 which confers immunity from demolition in respect of building constructions which have been completed three years prior to the issue of demolition notice or issue any other appropriate writ or order or direction against all the Respondents, which in the circumstances of the case, this Honourable Court deems fit to pass and thus render justice and

(ii) award costs to the Petitioner against all the Respondents.

For Petitioner in WP.12224/98 : Mr. V. Paul Das for M/s. Sampathkumar Assts.

For petitioner in Wps.9188 to 9190/1999. : Mr. V. Bhiman

For Respondents in WP.12224/98 : Mr.J.Ravindran for R.5
Mr. V. Bhiman for R.1

For respondents in Wps.9188 to : Mr.J.Ravindran for R.1
Mr.V. Paul Das for

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9190/1999. for M/s. Sampathkumar Assts. and R.3.
Mr. K. Elango Spl. G.P. R2
No appearance R4

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COMMON ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

Heard both sides.

2. Considering the relief prayed by the respective parties, we directed the Chennai Metropolitan Development Authority to submit a report. Pursuant to our direction, the Assistant Planner, Enforcement Cell of Madras Metropolitan Development Authority inspected the property situated at Door No.20, Millers road, Kilpauk, Chennai on 24.11.2006 and observed the following details.

> " 3. CMDA has issued planning permission for ground + 3 floors in Letter No.B2.21711.92 dt.4.11.92. Ground Floor + 3 floors residential buildings are existing.
> 4. All 3 sides (i.e. North, East and West) set back open space is existing with car parking. Apart from there is a covered car parking to the flat owners.
> 5. The southern side there are six compound cross walls to an height of 5 feet is existing in southern set back open area. One bay is covered with fiber sheet lean to roof in the second bay.
> 6. Further observed in the front portion in the Southern side there is a permanent transformer room and on the rear side of the southern side there is a children play area wherein play instruments are fixed and permanent motor room. The six compound cross walls situated in between the transformer room in one side and the children play area on the other side. The respondents 1 to 4 are residing in the ground floor and all others are residing in the first floor to third floor.
> 7. There is no approval for compound cross walls. "

Apart from the above information, the Assistant Planner has also enclosed the inspection sketch pointing out compound cross brick

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walls, for which no approval was granted. The said report is dated 09.01.2007.

3. Though Mr. Bhiman, learned counsel appearing for the petitioner in WP.Nos.9188 to 9190 of 1999 submitted that representation has been made even in the year 1998 to the Commissioner and Secretary to Government, Housing and Urban Development Department through Chennai Metropolitan Development Authority, at this juncture, we are not inclined to issue any direction for disposal of the said representation. However, the petitioner in WP.Nos.9188 to 9190 of 1999, who is the first respondent in W.P.Noo.12224 of 1998, is permitted to make a fresh representation highlighting his grievance to the Member Secretary, Chennai Metropolitan Development Authority, within a period of two weeks from the date of receipt of copy of this order. The Member Secretary, Chennai Metropolitan Development Authority, is directed to dispose of the said representation within a period of eight weeks from the date of such representation in accordance with law, after affording opportunity to all the parties concerned. Depending on the decision of the Member Secretary, the Chennai Metropolitan Development Authority, is free to take further action in respect of the offending portion if any.

With the above observation, the writ petitions are disposed of. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Government,
   Housing & Urban Development Department,
   Chennai-600 009.

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2. The Member Secretary,
   Chennai Metropolitan
   Development Authority,
   Thalamuthu Natarajan Building,
   No.1, Gandhi Irwin Road,
   Chennai-600 008.

1 cc to the Mr.V. Bhiman, ADvoate, Sr. 6176
1 cc to the Sampath Kumar, Associates, sr. 6191

MS (CO)
kk 6/2

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